

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, California 94105**

RH01018405

September 3, 2003

**NOTICE OF PROPOSED ACTION
AND NOTICE OF PUBLIC HEARING**

**CALIFORNIA AUTOMOBILE ASSIGNED RISK PLAN
PLAN OF OPERATIONS**

SUBJECT OF HEARING

California's Insurance Commissioner will consider a revised Plan of Operations, superseding sections 2400, *et seq.* of Title 10 of the California Code of Regulations regarding the operation and administration of the California Automobile Assigned Risk Plan (CAARP).

AUTHORITY AND REFERENCE

The Commissioner will adopt or reject the Plan of Operations pursuant to the authority vested in him by Section 11620 of the California Insurance Code (CIC). The Plan of Operations implements, interprets and make specific the provisions of CIC §§11620, 11622, 11622.5, 11623, 11623.5, 11624, 11624.08, 11624.09, 11624.1, 11624.2, 11624.3, 11627, and 11627.5.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposal at the following date, time, and place:

Thursday, November 6, 2003 -- 11:30 a.m.
Department of Insurance Hearing Room
45 Fremont Street, 22nd Floor
San Francisco, California 94105

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

INFORMATIVE DIGEST

Pursuant to CIC § 11620 *et seq.*, the Commissioner must approve or issue a reasonable plan for the equitable apportionment, among insurers admitted to transact liability insurance, of those applicants for automobile bodily injury and property damage liability insurance who are in good faith unable to procure that insurance through ordinary methods. The Plan sets forth the overall administrative and operating procedures for CAARP. The current Plan of Operations, set forth in Title 10 of the California Code of Regulations has become substantially outdated by changes in the assigned risk and related laws, and by plan experience. Consequently, a new Plan of Operations is proposed, which is intended to replace the current CAARP administrative and procedural regulations set forth in the California Code of Regulations.

10 CCR § 2400 *et seq.* The plan includes provisions governing, among other things, administrative matters, producer certification and performance standards, personal and commercial automobile coverage and insurer performance standards. The proposal updates the plan of operations in conformance with current policies and recent statutory additions and thus will facilitate uniformity, reliability and fairness in the operation of the plan.

The CAARP statute requires the Commissioner to hold a public hearing and thereafter "approve or issue a reasonable plan for the equitable apportionment" of eligible applicants to subscribing insurers. CIC §11620. The Commissioner may "approve reasonable amendments to the plan if he or she first holds a public hearing to determine whether the amendments are keeping with the intent and purpose" of the statute. *Id.* Public notice of a hearing regarding the plan must precede the public hearing or the end of public comment period by at least 60 days and must appear in newspapers of general circulation in San Francisco and Los Angeles. *Id.*

CIC §11624 requires that the plan contain, among other things:

- (a) Standards for determining eligibility of applicants for insurance, including a requirement of a certificate of eligibility . . .
- (b) Procedures for making application for insurance, for apportionment of eligible applicants among the subscribing insurers and for appeal to the commissioner. . .
- (d) Rules and regulations governing the administration and operation of the plan.
- (e) Provisions showing the basis upon which premium charges shall be made, and the manner of payment thereof. . . .
- (f) Any other provisions as may be necessary to carry out the purposes of this article.

CIC §11624 (emphasis supplied).

The proposed plan sets forth eligibility standards, application procedures, apportionment of assignments provisions, and rules and regulations of CAARP's operation. These are elements expressly required to be included in the plan under subdivisions (a), (b) and (d). The other provisions in the plan are necessary to carry out the plan's purpose and thus fall within the scope of subdivision (f). The plan thus sets forth elements required by statute to be included in the plan approved by the Commissioner.

Although the plan has been printed in the California Code of Regulations, there is no requirement that the plan be printed in the California Code of Regulations in full text. The Government Code contemplates that regulations adopted by an agency may be incorporated by reference in a regulation. CGC §11344.6. In fact, there are several existing examples in the California Code of Regulations of incorporation by reference. See, e.g., 10 CCR § 2318 *et seq.* (workers' compensation insurance statistical reporting plans). For insurers and producers subject to the plan, ease of use and efficiency would be promoted if the full text of the plan appeared only in the Plan of Operations itself, as is done country-wide. Therefore, it is proposed that the plan simply be incorporated by reference in a regulation printed in the California Code of Regulations.

This proposal was recommended by the CAARP Advisory Committee, in accordance with CIC § 11623(a).

There are no corresponding federal statutes or regulations on this subject.

EFFECT OF PROPOSAL

The effect of each specific proposed section is as follows:

Introduction

This portion of the Plan simply provides background and basic information for insurance producers submitting applications to CAARP. This section replaces sections 2400, 2401, and 2497.

Definitions

Section 1. Definitions

This section defines the terms used in the operation of the plan. This section replaces section 2403.

Administrative Part

Section 2. Plan Membership

This section sets forth the obligation of every admitted liability insurer to participate in the program. It replaces sections 2405 and 2498.

Section 3. Administration

This section describes the Advisory Committee membership and meetings and the right of the Commissioner to examine the plan. It replaces section 2420, 2421, 2421.1a, and 2496.

Section 4. Cost of Administration

This section sets forth the basis for apportioning the costs of administering the plan and requirements for paying assessments. This section replaces sections 2405, 2421.4, 2421.5, 2490, and 2491.

Section 5. Duties of Advisory Committee

This section sets forth the duties of the Advisory Committee, replacing section 2421.2.

Section 6. Duties of the Manager

This section describes the duties of the manager. It replaces sections 2421.3, 2421.6, 2422, 2492, 2492.1, 2492.3, 2492.5, 2494, and 2494.5.

Section 7. Amendment of Plan

This section describes the process for amending the plan, and replaces section 2421.9.

Section 8. Determination and Fulfillment of Private Passenger Nonfleet Liability Quota

This section sets forth the basis for determining an insurer's assigned risk quota, replacing sections 2445, 2445.1, and 2448. It also describes the Limited Assignment Distribution Procedure authorized by CIC §11623.5, replacing section 2454.

Section 9. Determination and Fulfillment of Quotas Calendar Year [Insert Year] and Prior Years

This proposal eliminates the Other Than Private Passenger (“OTPP”) quota distribution. To assist insurers during the transition period when the elimination of the OTPP quota distribution occurs, information pertaining to the determination of the OTPP and Private Passenger Nonfleet Liability quotas for the calendar year and those prior have been introduced in new Section 9.

Section 10. Reserved for Future Use**Section 11. Commercial Automobile Insurance Procedure Administration**

This section describes the administration of the commercial assigned risk program, including the servicing carrier application and appointment process, and procedures applicable to servicing carrier withdrawal or termination. It replaces section 2432.

Section 12. Commercial Automobile Insurance Procedure Participation Provisions

This section describes insurers’ obligations to participate in the CAIP program. It replaces section 2432.

Section 13. Reserved for future Use**Section 14. General Provisions**

This section sets forth various administrative provisions, including data reporting, data correction, quality standards, assignments/participation to new or withdrawing insurers or insurers discontinuing or resuming writing, insurers in financial difficulty, insolvent insurers, insurer merger and consolidation, assumption of policy obligations, failure to subscribe to the plan, and settlement balances for insurers in rehabilitation. It replaces sections 2432, 2448, 2449.1, 2449.1a, 2449.2, 2493, 2493.2, and 2493.4.

Section 15. Rate Determination

This section sets forth the basis for determining applicable rates and premiums and requires insurers to provide certain information for that purpose. It replaces sections 2404, 2421.10, and 2461.

Section 16. Right of Appeal

This section sets forth the procedure applicable to appeals of actions taken by any insurer, the Manager, or the committee. It replaces section 2495.

Section 17. Indemnification

This section concerns CAARP’s right to defend and obligation to indemnify Committee members against loss for matters arising out of the performance of their Committee functions. It replaces section 2494.7.

Section 18. Reserved for Future Use**Producer Certification and Performance Standards Part****Section 19. Producer Certification**

This section sets forth the process for becoming a certified producer and the responsibilities of certified producers. This section replaces section 2431.1.

Section 20. Performance Standards

This section sets forth the performance standards for certified producers. It replaces section 2431.2.

Section 21. Reserved for Future Use**Personal Automobile Part**

Section 22. Eligibility

This section describes eligible applicants and vehicles. It specifies the means of establishing eligibility for a policy under the plan, and provides that insurers need not cover unlicensed persons or those who fail to pay the premium. This section limits the plan to covering vehicles registered in California (with limited exceptions). It replaces sections 2404, 2430, and 2431.

Section 23. Application Requirements

This section spells out certain information to be stated in and the facts about the applicant to be obtained on the insurance application and certificate of eligibility. It also specifies required notices to the applicant, including a fraud warning and a provision designed to protect against repeat applications by persons who have failed to pay for prior CAARP coverage. It replaces sections 2441 and 2442.

Section 24. Reserved for Future Use**Section 25. Extent of Coverage**

This section specifies the limits of liability, medical payments and uninsured motorists coverage to be provided on approved policy forms. It replaces sections 2406, 2407, and 2408.

Section 26. Premium Payment Options

This section describes the options applicable to payment of premiums for assigned risk policies, and premium owed for prior policies. It sets forth procedures applicable for dishonored checks. It replaces sections 2443, 2443.1, and 2453.

Section 27. Reserved for Future Use**Section 28. Application for Assignment, Designation of Insurer, Evidence of Insurance, and Effective Date of Coverage**

This section sets forth the Manager's requirements upon receipt of applications, and procedures applicable to effective dates of coverage. It also specifies return premium provisions under certain circumstances. It replaces sections 2444, 2444.5, and 2444.6.

Section 29. Additional Vehicles or Coverages

This section sets forth the requirements applicable to policy changes during the term of the policy.

Section 30. Reserved for Future Use**Section 31. Three-Year Assignment Period**

This section provides that the assignment period generally shall be 36 consecutive months. It replaces section 2482, 2483.3, and 2483.6.

Section 32. Reserved for Future Use**Section 33. Cancellations**

This section sets forth the procedures when a policy is cancelled mid-term. It replaces sections 2453, 2470, 2471, 2471.1, and 2472.

Section 34. Commission to Producer of Record

This section sets forth the commission rates to be paid to producers for assigned risk business. It replaces section 2462.

Sections 35 – 36. Reserved for Future Use**Section 37. Performance Standards for Insurers Writing California Automobile Assigned Risk Plan Private Passenger Nonfleet Risks**

This section sets forth the performance standards for insurers in their assigned risk and Low Cost automobile business. It replaces section 2431.3, 2450, 2450.5, 2482, 2482.1, and 2483.5.

Sections 38 – 39. Reserved for Future Use.**Commercial Automobile Part****Section 40. Eligibility**

This section describes eligible commercial applicants and vehicles. It replaces sections 2404, 2430, 2431, and 2432.

Section 41. Application Requirements

This section spells out certain information to be stated in and the facts about the applicant to be obtained on the insurance application. It also specifies required notices to the applicant, including a fraud warning and a provision designed to protect against repeat applications by persons who have failed to pay for prior CAARP coverage. It replaces sections 2441 and 2442.

Section 42. Reserved for Future Use**Section 43. Extent of Coverage**

This section specifies the limits of liability, medical payments and uninsured motorists coverage to be provided, on an approved form, subject to any higher limits that may be required. It replaces sections 2406, 2407, and 2408.

Section 44. Premium Payment Options

This section describes the options applicable to payment of premiums for assigned risk policies, and premium owed for prior policies. It sets forth procedures applicable for dishonored checks. It replaces sections 2443, 2443.1, and 2453.

Section 45. Reserved for Future Use**Section 46. Application for Assignment, Designation of Servicing Carrier, Evidence of Insurance, and Effective Date of Coverage**

This section sets forth the Manager's requirements upon receipt of applications, and procedures applicable to effective dates of coverage. It also sets forth return premium requirements under certain circumstances. It replaces sections 2444, 2444.5, and 2444.6.

Section 47. Additional Vehicles or Coverages

This section sets forth the requirements applicable to policy changes during the term of the policy.

Section 48. Reserved for Future Use

Section 49. Three-Year Assignment Period

This section provides that the assignment period generally shall be 36 consecutive months. It replaces section 2482, 2483.3, and 2483.6.

Section 50. Change of Ownership/Transfer of Loss Experience

This section provides that all exposures of commonly owned entities should be written on the same policy and combined for rating purposes, and describes the applicable procedure.

Section 51. Cancellations

This section sets forth the procedures when a policy is cancelled mid-term. It replaces sections 2453, 2470, 2471, 2471.1, and 2472.

Section 52. Commission to Producer of Record

This section sets forth the commission rates to be paid to producers for assigned risk business. It replaces section 2462.

Section 53. Reserved for Future Use

Section 54. Performance Standards for Servicing Carriers Writing California Automobile Assigned Risk Plan Commercial Risks

This section sets forth the performance standards for insurers writing commercial assigned risk business. It replaces section 2431.3, 2432, 2450, 2482, 2482.1, and 2483.5.

Section 55. Additional Premium Reporting Time Limit

This new section requires the servicing carrier to obtain preapproval for any additional premium of \$5,000 or greater if the reporting date is more than three years following the policy termination date. It addresses the issue of late reported “estimated” earned premium and the corresponding premium charge-off that usually accompanies it. The late reported additional premium is based upon unaudited unverified policy rating exposures from external sources other than the named insured’s business records. There is generally little chance of collecting the additional premium. The estimated premium is reported as written and earned premium, triggering additional premium based expenses or resulting in under compensation of the servicing carrier for services provided and expenses incurred as a result of the unanticipated policy exposures. Any such request submitted by a servicing carrier will be timely reviewed, and the servicing carrier may appear before the Advisory Committee in connection with the request.

Sections 56 – 57. Reserved for Future Use

The following sections, currently included in Title 10, California Code of Regulations, sections 2400 *et seq.*, are not included in the new Plan of Operations because they are included in the CAARP Simplified Manual of Rules and Rates, referenced in section 2498.5, which took effect as of July 1, 1999: 2460, 2460.3, 2460.5, 2498.1, 2498.2, 2498.3.1, 2498.4, 2498.4.1, 2498.4.2. The surety bond requirement in section 2421.6 is being deleted as unnecessary, as are sections 2447, 2480, 2481, 2482.3, 2482.5, and 2483.4.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Commissioner prior to the public comment deadline. Comments should be addressed to the contact person for this proposal:

California Department of Insurance
Attention: Elizabeth Mohr
45 Fremont Street, 21st Floor
San Francisco, CA 94105
mohre@insurance.ca.gov
(415) 538-4112

The backup contact person for this proposal is:

California Department of Insurance
Attention: Michael Riordan
45 Fremont Street, 21st Floor
San Francisco, CA 94105
riordanm@insurance.ca.gov
(415) 538-4226

Written comments may be faxed to (415) 904-5490

Any interested person may present oral and/or written testimony at the public hearing.

Comments shall be transmitted by means of one method only.

Members of the public requiring assistance with their presentation are encouraged to contact the Office of the Public Advisor at the following address and telephone number prior to the hearing:

California Department of Insurance
Office of the Public Advisor
45 Fremont Street, 23d Floor
San Francisco, California 94105
(415) 538-4065

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the address listed immediately above.

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

DEADLINE FOR WRITTEN COMMENTS

Written comments on the proposed Plan of Operations must be **received** at the San Francisco office of the Commissioner by **5:00 p.m. on November 6, 2003**, to be considered.

TEXT OF PLAN AND INITIAL STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons for the proposal, in addition to the informative digest included in this notice. The text of the proposed plan of operations and the initial statement of reasons will be made available for inspection or copying upon **written** request to the contact person for these hearings (listed above).

By prior appointment, the file for this proceeding is available for inspection at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS / FEDERAL FUNDING:

The Commissioner believes that there will be no direct cost or savings to, nor will there be any new programs mandates on, any local agency, state agency or school district from the proposal, and that the proposal will not affect federal funding to the state.

IMPACT ON HOUSING COSTS

The matters proposed herein will not affect housing costs.

ALTERNATIVES

The Commissioner has determined that no reasonable alternative of which he is aware would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Commissioner requests public comment on potential alternatives to the proposed plan.

ECONOMIC IMPACT ON BUSINESS AND INDIVIDUALS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE:

The Commissioner has initially determined that the proposal will not have an adverse economic impact on businesses and individuals in California or on the ability of any California business to compete. The Commissioner invites interested parties to comment on this issue.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA:

The Commissioner is required to assess any impact the proposal may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposal will have any impact on any of the above, but invites interested parties to comment on this issue.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Commissioner is not aware of any cost impact that a representative private person or business would necessarily occur in reasonable compliance with the proposed action. To the extent that the proposal does have a cost impact, that cost impact is a result of the Insurance Code sections being implemented, interpreted or made specific by the proposal, and not as a direct result of the proposal itself. The Commissioner invites all interested parties to comment on this issue.

AFFECT ON SMALL BUSINESS

To the extent this proposal affects insurers, the proposal does not affect small businesses because insurers are excluded from the definition of small business. To the extent the proposal affects insurance producers, it is simply clarifying existing statutes.

NON-DISCRETIONARY COSTS OR SAVING

The proposal will not impose any non-discretionary cost or savings on local agencies.

COST OR SAVINGS TO STATE AGENCIES

The proposal will not result in any cost or in significant savings to state agencies.

REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of the proposed plan would not mandate the use of specific technologies or equipment.

IMPACT ON COMPETITIVENESS

The proposal will not have an adverse impact on competition or competitiveness.

BUSINESS REPORT

The existing statutes and regulations require various reports of insurers in connection with their assigned risk business. This proposal continues those reporting requirements.

PLAIN ENGLISH

The proposal is in plain English except to the extent that technical terms could not be avoided, and those technical terms are defined in plain English.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

AUTOMATIC MAILING

A copy of this notice is being sent to all persons on the Insurance Commissioner's mailing list applicable to this proceeding.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

AVAILABILITY OF TEXT OF PLAN AS MODIFIED AFTER HEARING

The full text of the plan, if modified after the public comment period, will be available for at least 15 days prior to the date on which the agency adopts or amends the proposal.

ADDITIONAL PUBLIC COMMENT -- SUBSTANTIVE CHANGES

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text that the public had adequate notice of the proposal, as amended, copies will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes **only**, for a period of at least 15 days.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

ADOPTION OF PLAN

Following the hearing and close of all public comment periods, the Commissioner may adopt the proposal substantially as described in this Notice and the Initial Statement of Reasons.

FINAL STATEMENT OF REASONS

A Final Statement of Reasons will be prepared at the conclusion of this proceeding. A copy of the Final Statement of Reasons, once it has been prepared, will be available on the Department's website or may be obtained from the contact persons for this proposal.
